

1978

## c 86 The Co-operative Corporations Amendment Act, 1978

Ontario

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## CHAPTER 86

**An Act to amend  
The Co-operative Corporations Act, 1973**

*Assented to December 15th, 1978*

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Subsection 1 of section 5 of *The Co-operative Corporations Act, 1973*, being chapter 101, is repealed and the following substituted therefor: s. 5 (1),  
re-enacted

(1) Five or more persons, being,

Articles of  
incorporation

(a) corporations; or

(b) natural persons who are of the age of eighteen years or more,

and who intend to be members of the co-operative, may incorporate a co-operative with or without share capital by signing and delivering to the Minister in duplicate articles of incorporation.

- (2) Subclause ii of clause *b* of subsection 3 of the said section 5 is repealed. s. 5 (3) (b) (ii),  
repealed

- (3) Subsection 6 of the said section 5 is repealed and the following substituted therefor: s. 5 (6),  
re-enacted

(6) The signature of each incorporator and of each first director and the fact that, Affidavits

(a) each incorporator who is a natural person and each first director is of the age of eighteen years or more; and

(b) each incorporator is to be a member of the co-operative,

shall be verified by affidavit.

s. 7 (5),  
re-enacted

2. Subsection 5 of section 7 of the said Act is repealed and the following substituted therefor:

Use of  
"Incor-  
porated",  
"Corpora-  
tion"

(5) Subject to subsection 6, the name of a co-operative incorporated after the 31st day of March, 1974 shall have the word "Incorporated" or "Corporation" or its corresponding abbreviation "Inc." or "Corp." as the last word thereof.

s. 24 (1) (d, e),  
re-enacted

- 3.—(1) Clauses *d* and *e* of subsection 1 of section 24 of the said Act are repealed and the following substituted therefor:

(*d*) where a member is a co-operative, the election or appointment of delegates and alternate delegates to represent the member co-operative on the basis of the number of members in the member co-operative or the volume of business done with the co-operative, or both;

(*e*) the method of electing or appointing delegates and the number of delegates.

s. 24 (3),  
re-enacted

- (2) Subsection 3 of the said section 24 is repealed and the following substituted therefor:

Qualification  
of delegates

(3) No person shall be elected or appointed a delegate who is not a member, officer or director of the co-operative or of a member co-operative.

s. 32 (1) (a),  
re-enacted

- 4.—(1) Clause *a* of subsection 1 of section 32 of the said Act is repealed and the following substituted therefor:

(*a*) with the consent of the holder thereof, may purchase all or a part of the shares in the co-operative held by any person upon payment of such an amount to that person as is agreed upon not exceeding the par value of the shares together with any dividends declared but unpaid.

s. 33 (3) (b) (ii),  
re-enacted

- (2) Subclause ii of clause *b* of subsection 3 of the said section 32 is repealed and the following substituted therefor:

(ii) the board of directors may resell the shares at such time as it determines for a consideration equal to the product of the number of shares resold multiplied by the par value thereof.

s. 33 (2),  
re-enacted

5. Subsection 2 of section 33 of the said Act is repealed and the following substituted therefor:

(2) Shares accepted under subsection 1 are not thereby cancelled and the board of directors may sell the shares at such time as it determines for a consideration equal to the product of the number of shares sold multiplied by the par value thereof. Sale of donated shares

6. Section 34 of the said Act is repealed and the following substituted therefor: s. 34, re-enacted

34.—(1) No co-operative or person shall sell, dispose of, or accept directly or indirectly any consideration for securities of the co-operative where the co-operative has more than fifteen security holders, or where the sale or disposition of or acceptance of consideration for such securities would have the effect of increasing the number of security holders in the co-operative to more than fifteen, unless the co-operative has filed with the Minister an offering statement and has obtained a receipt therefor. Offering statement

(2) Subsection 1 does not apply to, Exception

(a) the issue of shares under subsection 1 of section 56 or of debt obligations under subsection 4 of section 56; or

(b) a co-operative that has filed with the Ontario Securities Commission both a preliminary prospectus and a prospectus in respect of the offering of its securities and receipts therefor have been obtained from the Director of the Ontario Securities Commission and copies thereof have been filed with the Minister.

7. Subsection 1 of section 39 of the said Act is amended by striking out "at least" in the second line. s. 39 (1), amended

8. Section 41 of the said Act is repealed and the following substituted therefor: s. 41, re-enacted

41.—(1) A co-operative may provide by by-law for the payment of commissions to persons in consideration of their procuring subscriptions for shares in the co-operative, but no such commission shall exceed 10 per cent of the par value of the shares. Commission on sale of shares

(2) Except as provided in subsection 1, no co-operative shall apply any of its shares or capital, either directly or indirectly, in payment of any commission to any person in consideration of his procuring subscriptions for shares of the co-operative, whether the shares or capital is so applied by being added No unauthorized commission



to the purchase money of any property acquired by the co-operative or to the contract price of any work to be executed for the co-operative, or is paid out of the nominal purchase money or contract price or otherwise.

s. 43.  
re-enacted

9. Section 43 of the said Act is repealed and the following substituted therefor:

Lien on  
shares

43. Where a member is indebted to the co-operative for goods or services, and where the articles or by-laws so provide, the co-operative has a lien to the extent of the debt on the shares registered in the name of the member.

s. 49 (1).  
amended

- 10.—(1) Subsection 1 of section 49 of the said Act is amended by striking out "8" in the fifth line and inserting in lieu thereof "10".

s. 49.  
amended

- (2) The said section 49 is amended by adding thereto the following subsection:

Termination  
of  
membership

(3) Where a member of a co-operative without share capital,

(a) has failed to transact any business with the co-operative for a period of two years; or

(b) is a corporate member about to be dissolved,

then the directors of the co-operative may, by resolution passed by a majority of the board, terminate the membership and upon termination the co-operative, subject to section 67, shall repay to the member the amount outstanding on loans to the co-operative that are repayable on demand by the member together with interest accrued thereon.

s. 54 (b).  
re-enacted

11. Clause *b* of section 54 of the said Act is repealed and the following substituted therefor:

(b) provide for the payment of dividends on the share capital at a rate not to exceed 10 per cent per annum of the amount paid up thereon or of the par value thereof, whichever is the lesser.

s. 56 (4).  
amended

12. Subsection 4 of section 56 of the said Act is amended by striking out "8" in the seventh line and inserting in lieu thereof "10".

s. 57 (2) (a).  
amended

13. Clause *a* of subsection 2 of section 57 of the said Act is amended by striking out "8" in the second line and inserting in lieu thereof "10".

14. Subsection 2 of section 58 of the said Act is amended by striking out "8" in the first line and inserting in lieu thereof "10". s. 58 (2),  
amended
15. Subsection 4 of section 64 of the said Act is repealed and the following substituted therefor: s. 64 (4),  
re-enacted
- (4) Notwithstanding subsection 3, a member who has given notice under subsection 1 may elect in such notice to retain all or some of his shares or loans in the co-operative, but such election shall not entitle him to remain a member of the co-operative. Election  
by member
- 16.—(1) Subsection 1 of section 67 of the said Act, exclusive of the clauses, is repealed and the following substituted therefor: s. 67 (1),  
amended
- (1) A co-operative shall not exercise its powers under subsection 3 of section 49, section 64 or 66, Where  
repayment  
not to be  
made
- . . . . .
- (2) Subclause ii of clause b of subsection 2 of the said section 67 is repealed and the following substituted therefor: s. 67 (2) (b) (ii),  
re-enacted
- (ii) the board of directors may resell the shares at such time as it determines for a consideration equal to the product of the number of shares resold multiplied by the par value thereof.
17. Section 83 of the said Act is repealed and the following substituted therefor: s. 83  
re-enacted
83. Where a person holds shares or a member loan as a personal representative of a member, the personal representative is entitled to vote at all meetings of members. Personal  
representative  
may vote
18. Section 104 of the said Act is repealed and the following substituted therefor: s. 104,  
re-enacted
104. The members may, by resolution passed by a majority of the votes cast at a general meeting duly called for that purpose, remove any director before the expiration of his term of office and may, by a majority of the votes cast at the meeting, elect any qualified person in his stead for the remainder of his term. Removal of  
directors
19. Section 123 of the said Act is amended by adding thereto the following subsection: s. 123,  
amended
- (1a) A co-operative that has never issued securities and that at the end of a financial year has less than \$5,000 in capital Idem

and less than \$5,000 in assets is exempt in respect of that year from sections 124 and 125, subsections 1 and 2 of section 126, section 127 and clause *b* of subsection 1 and subsection 3 of section 128.

s. 130(2),  
par 2,  
subpar 1,  
re-enacted

20. Subparagraph i of paragraph 2 of subsection 2 of section 130 of the said Act is repealed and the following substituted therefor:

i. the amount of surplus arising from the reorganization of the co-operative's issued capital, including *inter alia*, the amount of surplus realized on the purchase of shares.

s. 143,  
re-enacted

21. Section 143 of the said Act is repealed and the following substituted therefor:

Affairs not  
conducted on  
co-operative  
basis

143. Where the Minister is of the opinion that the business and affairs of the co-operative are not being conducted on a co-operative basis, he may, after giving the co-operative an opportunity to be heard,

R.S.O. 1970,  
c. 53

(a) issue a certificate of amendment changing the co-operative into a corporation subject to the provisions of *The Business Corporations Act* and when necessary for the purpose, changing the co-operative into a corporation with share capital; or

R.S.O. 1970,  
c. 89

(b) issue a certificate of amendment changing the co-operative into a corporation subject to the provisions of Part III of *The Corporations Act* and where necessary for the purpose, changing the co-operative into a corporation without share capital.

s. 144 (1),  
re-enacted

22. Subsection 1 of section 144 of the said Act is repealed and the following substituted therefor:

Limit to  
non-member  
business

(1) Where the Minister is of the opinion that a co-operative has for a period of three years or longer conducted 50 per cent or more of its business with non-members of that co-operative, he may, after giving the co-operative an opportunity to be heard,

R.S.O. 1970,  
c. 53

(a) issue a certificate of amendment changing the co-operative into a corporation subject to the provisions of *The Business Corporations Act* and where necessary for the purpose, changing the co-operative into a corporation with share capital; or



- (b) issue a certificate of amendment changing the co-operative into a corporation subject to the provisions of Part III of *The Corporations Act* and where necessary for the purpose, changing the co-operative into a corporation without share capital. R.S.O. 1970.  
c. 89

**23.**—(1) Subsection 1 of section 151 of the said Act is amended by adding thereto the following clause: s. 151 (1),  
amended

- (n) convert it into a corporation to which Part III of *The Corporations Act* applies. R.S.O. 1970.  
c. 89

(2) Subsection 2 of the said section 151 is repealed and the following substituted therefor: s. 151 (2),  
re-enacted

- (2) An amendment under subsection 1, except clauses *l*, *m* and *n*, shall be authorized by a special resolution. Author-  
ization

(3) Subsection 3 of the said section 151 is repealed and the following substituted therefor: s. 151 (3),  
re-enacted

- (3) Subject to section 152, an amendment under clause *l*, *m* or *n* of subsection 1 shall be authorized by a resolution of the board of directors and confirmed by at least three-quarters of the votes cast at a general meeting of the members of the co-operative duly called for that purpose. Idem

**24.**—(1) Subsection 2 of section 162 of the said Act, exclusive of the clauses, is repealed and the following substituted therefor: s. 162 (2),  
amended

- (2) The articles or by-laws of a co-operative may provide that, upon the dissolution of the co-operative and after the payment of all debts and liabilities, including any declared and unpaid dividends and the amount paid up on any outstanding shares, which amount shall not exceed the par value thereof, the remaining property of the co-operative or any part thereof may be distributed or disposed of, Distribution  
of property  
upon  
dissolution

(2) Subsection 3 of the said section 162 is repealed and the following substituted therefor: s. 162 (3),  
re-enacted

- (3) In the absence of any provisions in the articles or by-laws permitted by subsection 2, upon the dissolution of the co-operative, the whole of its remaining property shall be distributed equally among the members irrespective of the number of shares or amount of loans, if any, held or made by a member. Idem



s. 164(1),  
amended

**25.** Subsection 1 of section 164 of the said Act is amended by striking out "within one year after the authorization" in the third and fourth lines.

Commence-  
ment

**26.** This Act comes into force on the day it receives Royal Assent.

Short title

**27.** The short title of this Act is *The Co-operative Corporations Amendment Act, 1978*.